

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

RECEIVED

MAY 21 1996

In the Matter of

)

)

IB Docket No. 95-59

Preemption of Local Zoning

)

DA 91-577

Regulation of Satellite

)

45-DSS-MISC-93

Earth Stations

)

DOCKET FILE COPY ORIGINAL

Hughes Network Systems, Inc.
Opposition to Petitions for Reconsideration

HUGHES NETWORK SYSTEMS, INC.

James F. Rogers
Steven H. Schulman
LATHAM & WATKINS
1001 Pennsylvania Ave., NW
Suite 1300
Washington, DC 20004
(202) 637-2200

May 21, 1996

Its counsel

No. of Copies filed 0411
JUL 1996

TABLE OF CONTENTS

I. INTRODUCTION AND SUMMARY	1
II. THE COMMISSION HAS AUTHORITY TO ADOPT THESE REVISIONS	4
A. The Language Of Section 207 Does Not Preclude The Revisions.	4
B. The Legislative History Is Devoid Of Any Intent To Limit The Fcc's Authority.....	6
C. The Pro-Competitive Policies Of Section 207 Support The Revisions	8
III. THE RECORD SUPPORTS THE REVISIONS TO THE RULE.....	9
A. The Record Shows That The 1986 Rule Did Not Adequately Protect The Federal Interest	10
B. The Revised Rule Presents No Safety Problem	12

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
)	IB Docket No. 95-59
Preemption of Local Zoning)	DA 91-577
Regulation of Satellite)	45-DSS-MISC-93
Earth Stations)	

**Hughes Network Systems, Inc.
Opposition to Petitions for Reconsideration**

I. INTRODUCTION AND SUMMARY

In 1986, the Commission adopted a "limited preemption" of local satellite antenna zoning regulations, noting that it would "entertain requests for further action if it appears that local authorities are generally failing to abide by our standards."¹ In the decade since the adoption of Section 25.104 of its rules, 47 C.F.R. § 25.104, the Commission has compiled an overwhelming record that local regulators are either unable or unwilling to consider the federal interest when adopting satellite antenna regulations. As a result, unreasonable local regulations are impeding access to satellite signals and competition in the communications marketplace.

Based upon this record, the Commission revised its preemption rule in order more effectively to protect the federal interest in satellite communications. Local

¹ *Preemption of Local Zoning or Other Regulation of Receive-Only Satellite Earth Stations*, 51 Fed. Reg. 5519, ¶¶ 23, 40 (Feb. 14, 1986) ("1986 Order").

communities, represented by the National League of Cities ("NLC"), *et al.*; the Florida League of Cities ("FLC"); the City of Dallas, Texas ("Dallas"), *et al.*; and the County of Boulder, Colorado ("Boulder") (collectively referred to as "Petitioners"), wishing to continue their burdensome, arbitrary and inconsistent local regulation of interstate telecommunications, now urge the Commission to rescind its revised rule.

Petitioners argue that: (i) Section 207 of the Telecommunications Act of 1996 (the "Telecom Act") divests the Commission of authority to preempt local regulations of non-DBS satellite antennas; (ii) the record before the Commission does not support its finding of a widespread problem justifying federal preemption; and (iii) the revisions to the preemption are unreasonable because they ignore local health and safety concerns and other legitimate local interests.

There is no support for any of these arguments; accordingly, Hughes Network Systems, Inc. ("HNS"), the nation's leading provider of VSAT systems, urges the Commission to dismiss these petitions. First, Section 207 does not reduce the Commission's authority to adopt these revisions to Section 25.104. Section 207 is not a grant of new authority, but is a Congressional direction to the Commission to use its existing statutory authority to preempt nonfederal regulation of DBS dishes and other antennas. It therefore has no impact whatsoever upon the Commission's authority to regulate non-DBS satellite antennas pursuant to other sections of the Communications Act.

Second, the Commission's revisions are fully supported by the record. Indeed, it is hard to imagine a body of evidence more one-sided and compelling than the record before the Commission. In a proceeding that has lasted more than five years, the local communities have yet to rebut any of the countless examples of restrictive local regulations -- including one

thousand from one commenter alone.² Indeed, Petitioners' own comments in this proceeding demonstrate their ignorance of and indifference to satellite technology, federal communications policy, and the business realities of the interstate commerce they seek to regulate.

Finally, the Commission has proceeded cautiously and reasonably in adopting the revisions to Section 25.104. Nothing in the record supports Petitioners' claims that a rebuttable presumption will present any health or safety problems. Moreover, the Commission, while not required to balance local zoning and land-use interests, has bent over backwards to accommodate asserted local concerns. The Commission did not exercise its full authority to preempt all nonfederal regulations affecting satellite antennas; instead, it carefully considered asserted local interests and tailored the rule to distinguish between residential and commercial installations, and between smaller and larger satellite antennas.

In sum, the Petitioners' claims stand reality on its head. The record demonstrates that it is the local jurisdictions, not the Commission, that have abused their regulatory authority; it is the local jurisdictions, not the FCC that Congress intended to restrain from regulating, and it is the local jurisdictions, not the Commission, that have proven unable to tailor their actions to evolving public needs.

² Comments of SBCA.

II. THE COMMISSION HAS AUTHORITY TO ADOPT THESE REVISIONS

Earlier this year, Congress adopted its first major overhaul of the Communications Act of 1934. Included in the Telecom Act was a direction to the Commission to adopt and broaden the revisions to Section 25.104 that were pending at that time, enacted as Section 207:

Sec. 207. Restrictions on Over-the-Air Reception Devices.

Within 180 days after the date of enactment of this Act, the Commission shall, pursuant to section 303 of the Communications Act of 1934, promulgate regulations to prohibit restrictions that impair a viewer's ability to receive video programming services through devices designed for over-the-air reception of television broadcast signals, multichannel multipoint distribution service, or direct broadcast satellite services.

NLC and Dallas have centered their Petitions around Section 207, claiming that it supports their contention that Congress has eliminated the Commission's authority to preempt any local restrictions on non-DBS satellite antennas not enumerated in Section 207. This interpretation has no support in the language, legislative history, or policy objectives of Section 207, and must be dismissed.

A. The Language Of Section 207 Does Not Preclude The Revisions.

In 1986, the Commission found that Congress had delegated its authority to preempt local regulations interfering with the federal interest in promoting the construction and use of satellite antennas through "the broad mandate" of Section 1 of the Communications Act, the numerous powers granted by Title III of the Act (including Section 303), and the federal

right to access satellite signals found in Section 705.³ Not one of the courts to consider Section 25.104 has questioned this conclusion.⁴ and Section 207 does not alter the analysis.

Petitioners do not dispute that these provisions of the Communications Act provide the Commission the authority to preempt nonfederal regulations, but argue instead that Section 207 acts to nullify such authority. In particular, NLC and Dallas contend that Section 207, by directing the Commission to preempt restrictions affecting DBS antennas, "denies the Commission authority to preempt restrictions than impair reception of any other type of satellite service."⁵ NLC and Dallas therefore urge the Commission to remove VSAT and C-band services from the preemption of Section 25.104, and limit the rule to DBS antennas.⁶

Petitioners misconstrue the effect of Section 207. The plain language of the statute indicates that Congress was not granting any new authority to the Commission, but directing it to exercise its preexisting authority: "the Commission shall, pursuant to Section 303 of the Communications Act of 1934, promulgate regulations"⁷ It is no coincidence

³ 1986 Order at ¶ 23.

⁴ Order at ¶ 13.

⁵ Petition of NLC at 3. Dallas suggests, contrary to established case law, that because Congress has "expressed no affirmative authority to cover services other than DBS," the Commission lacks authority to preempt local regulation of antennas in these services. Petition of Dallas at 4. This opinion ignores -- and Dallas fails to distinguish -- *City of New York v. FCC*, 486 U.S. 57 (1988), which holds that the FCC's authority depends not upon explicit Congressional direction, but rather upon a reasonable accommodation of conflicting policies committed to its care by statute.

⁶ *Id.*; see also Petition of Dallas at 3-6.

⁷ 1996 Telecom Act § 207 (emphasis supplied).

that Section 303 is one of the foundations for the 1986 Rule and the then-proposed revisions.⁸ Petitioners do not even attempt to explain the presence of this language.

Furthermore, Section 207 is, by its terms, limited to PBS antennas and other non-satellite antennas. The statute does not affect the Commission's pre-existing authority to preempt local regulation of other non-DBS satellite antennas.

B. The Legislative History Is Devoid Of Any Intent To Limit The FCC's Authority.

The legislative history of Section 207 amplifies that Congress intended to direct the Commission to strengthen its existing rule, not to remove its existing authority.⁹ First, the House Commerce Committee Report begins by stating that Section 207 "directs" -- not "authorizes" -- the Commission to preempt inconsistent nonfederal regulations.¹⁰

Second, the House Report makes clear that it has no impact upon the powers of the Commission found elsewhere in the Communications Act. The Commerce Committee was careful to note, in two places, that only "this section" of the Act would prevent the enforcement of regulations directed at C-band dishes, leaving untouched the pre-existing

⁸ In particular, Section 303(r) authorizes the Commission to "make such rules and regulations . . . as may be necessary to carry out the provisions of this Act." 47 U.S.C. § 303(r).

⁹ In that regard, an irrebuttable presumption of preemption of local regulation of smaller satellite antennas would also be in accord with Section 303 and Section 207, and would be better policy. *See* Petition for Reconsideration and Clarification and Comments to Further Notice of Proposed Rulemaking of DIRECTV, Inc., filed April 15, 1996.

¹⁰ H.R. Rep. No. 204, 104th Cong., 1st Sess. 123 (1995) ("House Report").

ability of the FCC restrictions affecting non-DBS satellite antennas.¹¹ When Congress intended to preclude the Commission from exercising its authority to preempt state and local regulations under other parts of the Communications Act, it did so with clear instructions in the statute itself. For example, in Section 704 of the Telecom Act, Congress explicitly preserved state authority:

Except as provided in this paragraph, nothing in this Act shall limit or affect the authority of a State or local government . . . over decisions regarding the placement, construction and modification of personal wireless service facilities.¹²

There is not a trace of legislative history to support Petitioners' contention that Congress intended to wipe out a decade's worth of Commission policy, and no court will find such intent without explicit evidence. In *City of New York v. FCC*,¹³ the Court refused to find that the Cable Act had removed the Commission's pre-existing authority to preempt nonfederal regulation of cable television technical standards. The Court upheld the Commission's revisions to its decade-old policy, finding it "quite significant that nothing in the Cable Act or

¹¹ *Id.* at 124. NLC's interpretation of this section to include not only C-band dishes but all other non-DBS antennas is wholly unwarranted and unsupported. Petition of NLC at 5 ("VSAT and transmitting antennas are . . . excluded from Section 207 by its terms").

¹² Telecom Act § 704, codified at 47 U.S.C. § 332(c)(7). Incredibly, NLC asserts that this section precludes Commission preemption of local VSAT regulation because, NLC claims, VSATs are "personal wireless services facilities." Petition of NLC at 7 & n.13, n.15. This displays either complete ignorance of telecommunications law and facts or unrestrained advocacy. Section 332 governs "Mobile Services," a classification that the FCC has never applied to VSATs, which are stationary, not mobile.

¹³ 486 U.S. 57 (1988).

its legislative history indicates that Congress explicitly disapproved of the Commission's preemption of local technical standards.¹⁴

Such is the case here. Congress made no mention of Section 25.104 either in Section 207 or its legislative history, and expressed no limitation upon other sections of the Communications Act. The Commission's pre-existing authority was thus left intact. The only fair reading of the statute is that Congress singled out nonfederal DBS antenna regulation for immediate preemption (Section 207 adopts a 180-day deadline for Commission action), leaving intact the Commission's authority to preempt nonfederal regulation of other antennas on its own timetable.

C. The Pro-Competitive Policies of Section 207 Support The Revisions

The revised rule promotes the very same federal telecommunications policies expressed in Section 207. Congress enacted Section 207 in order to promote universal access to satellite signals and competition between communications providers by eliminating artificial local regulatory barriers.¹⁵ Likewise, the Commission adopted its revisions to Section 25.104 in order to "promote healthy competition and to facilitate access to satellite-delivered services, policies that are the very foundation of the Commission's Act."¹⁶

Petitioners' narrow view that Section 207 would allow unlimited local regulation of non-DBS satellite antennas does great violence to the federal policies of universal

¹⁴ *Id.* at 67. The Court also noted: "[W]e doubt that Congress intends to overturn the Commission's decade-old policy without discussion or even any suggestion that it was doing so." *Id.*

¹⁵ *See* House Report.

¹⁶ *Notice*, 10 F.C.C. Rcd. at 6996, ¶ 45.

access to nationwide communications systems embodied in the Communications Act. In sum, Petitioners suggest that Congress intended to permit extensive local regulation of all non-DBS satellite antennas, ostensibly because "no interstate commerce interests are implicated" by such regulation.¹⁷ The plain language and sparse legislative history of Section 207 simply cannot be construed to displace long-standing Commission policy and precedent.¹⁸

III. THE RECORD SUPPORTS THE REVISIONS TO THE RULE

Petitioners challenge the adequacy of the record; they predict (undefined) "safety hazards;" and they accuse the Commission of creating an undue burden on local communities.¹⁹ None of these arguments, all of which have already been considered by the Commission, provide a basis to reconsider the revisions to Section 25.104. First, the record in this proceeding could hardly be more one-sided and compelling; the only rational conclusion is that the 1986 Rule was not adequately preventing local jurisdictions from adopting restrictive and unreasonable satellite antenna regulations and needed amendment.²⁰

¹⁷ Petition of Dallas at 5. Petitioners base their interstate commerce claims not upon any factual showing that satellite services do not involve interstate commerce (there could be no such showing), but upon an expansive reading of *United States v. Lopez*, 115 S. Ct. 1624 (1995). According to Petitioners, *Lopez* would preclude Commission preemption of local zoning, land-use and other codes. Dallas at 7-11; NLC at 8-9. The burdens local satellite antenna regulations place on interstate commerce has been well documented throughout this proceeding, and can hardly be questioned. See, e.g., *Order* at ¶ 19.

¹⁸ Petitioners also argue that Section 207 limits the FCC's preemption to those regulations that physically prevent reception by the satellite antenna. Petition of NLC at 2; Dallas at 6-7. Because Section 207 does not affect the Commission's regulation of non-DBS antennas by its terms, the preemption of local restrictions on VSATs cannot be so limited.

¹⁹ Dallas at 9.

²⁰ 1986 *Order* at ¶¶ 23, 40.

Second, the “safety hazards” predicted by Petitioners are nothing more than the same hyperbole submitted in their comments in this proceeding. The Commission found, and the evidence fully supports, that smaller satellite antennas are safe and need no local regulation. Third, Congress has charged the Commission with assuring “to all the people of the United States a rapid, efficient, Nation-wide and world-wide wire and radio communications service with adequate facilities and reasonable charges.”²¹ The so-called local interests asserted by Petitioners are simply not part of the Commission’s statutory mandate. Nevertheless, the Commission explicitly tailored the rule to preserve local land use interests as much as possible.²²

A. The Record Shows That The 1986 Rule Did Not Adequately Protect The Federal Interest

In 1986, when the Commission first adopted Section 25.104, it said that it expected “that local authorities will conform their regulations to our standards and that they will make determinations . . . that reflect federal policy ”²³ This expectation has been disappointed; the record vividly illustrates that local authorities from across the country have ignored federal policy when adopting satellite antenna zoning regulations.

The record has shown that the 1986 Rule had several substantial defects. As a result, the rule failed adequately to protect the federal interest in the development of nationwide satellite networks. First, the 1986 rule established an ambiguous “reasonableness”

²¹ 47 U.S.C. § 151.

²² *Order* at ¶ 1.

²³ *1986 Order* at ¶ 39.

standard that gave insufficient direction to municipal officials, satellite antenna users, and courts. As a result, some courts upheld local regulations as long as actual reception was possible,²⁴ while others recognized that expensive procedures or other requirements would defeat the rule's objectives.²⁵

Second, the rule's exhaustion standards required an antenna user to exhaust all nonfederal administrative and judicial remedies before appealing to the FCC. Not only did this preclude Commission review of local regulations, but it also levied a heavy cost on antenna users to vindicate their rights under Section 25.104.²⁶

Local regulators, as a practical matter, were therefore largely free to enact and enforce unreasonable satellite antenna zoning restrictions. The record shows that many local jurisdictions never updated their regulations to reflect changes in satellite technology, and regulate smaller antennas, such as VSATs and DBS dishes, in the same manner as the old ten-foot backyard C-band antennas.²⁷ Other jurisdictions require approval procedures for satellite antenna installations so burdensome that consumers' choices were distorted heavily in favor of landline technology.²⁸ Commenters from all parts of the country, representing consumers,

²⁴ See, e.g., *Abbott v. City of Cape Canaveral*, 840 F. Supp. 880 (M.D. Fla. 1994).

²⁵ See, e.g., *Cawley v. City of Port Jervis*, 753 F. Supp. 128, 132-33 (1990).

²⁶ Notice, 10 F.C.C. Rcd. at 6997-98.

²⁷ See, e.g., Comments of the City of Dallas, *et al.*, filed July 14, 1995, at 11 ("most of the 10,000 local jurisdictions are unaware that their land use regulations and safety codes are subject to preemption by a federal agency"); Comments of Maine Municipal Ass'n, filed July 13, 1995, at 1 (characterizing a satellite antenna as a "structure").

²⁸ See Order at ¶¶ 19-20; see also Reply Comments of HNS, filed August 15, 1995.

installers, manufacturers and service providers, have described their experiences with unreasonable local regulations.²⁹

Petitioners argue that this record is insufficient to establish the existence of a widespread problem, latching onto the Commission's statement that the "evidence relates to only a small percentage" of jurisdictions.³⁰ Given the many examples of restrictive local regulations, it is hard to imagine what the Petitioners would consider an adequate record. Indeed, most of the very few examples of asserted reasonable regulations provided by local jurisdictions were in fact good evidence of unreasonably restrictive local practices.³¹

B. The Revised Rule Presents No Safety Problem

After assailing the adequacy of the record, Petitioners claim that by adopting a rebuttable presumption against the validity of local regulations affecting smaller satellite antennas, the Commission has shown an "alarming and unprecedented" lack of concern about health and safety.³² The record makes it abundantly clear that smaller satellite antennas, such as VSATs, present no health or safety concerns. Local regulation in this area is largely unwarranted, and the Commission rightly adopted a presumptive preemption.

²⁹ *Order* at ¶¶ 19-23.

³⁰ NLC at 11 & n. 23; Dallas at 9.

³¹ In fact, several examples of regulations provided by local jurisdictions were so restrictive that they supported the proposed revisions. *See* Comments of Dallas, filed July 14, 1995 (describing satellite antenna approval process as involving public hearings and administrative and court review); *Order* at ¶ 23 & n.56 (noting that the City of Coral Gables, among others, requires burdensome permits and variances for smaller antennas). Petitioners also complain that the Commission somehow shifted the burden onto the local jurisdictions to prove the absence of any problems. To the contrary, the Commission merely noted that there had been little evidence provided to counter the substantial record of local interference with satellite antenna installations. Dallas at 11.

³² *Order* at ¶ 23.

NLC contends that the presumptive preemption of local regulation of smaller satellite antennas "exposes the public to imminent health or safety hazards."³³ First, the regulatory priorities of local communities belies this argument. Local jurisdictions typically do not regulate items of similar size commonly installed in local communities, such as basketball hoops, air conditioning units, and mailboxes, the Commission has found.³⁴ As HNS and other commenters demonstrated to the Commission, satellite antennas must be installed *more securely* than these items (or even television antennas), as the technical line of sight requirements do not permit *any* movement of the antenna.³⁵

Second, to the extent that local health and safety regulations are "immediately invalidated," as NLC states,³⁶ not one Petitioner has shown that this would result in unsafe or hazardous installations. There is nothing in the record to indicate that smaller satellite antennas pose any risk to health or safety, nor does NLC identify these putative "hazards." The Commission correctly noted that consumers and professional installers can be expected to install satellite antennas safely.³⁷ HNS, for example, has installed over 70,000 VSATs over the past five years, for a total of 228,000 "VSAT-years" of experience. Only twice have

³³ NLC at 13. This is little more than a reprise of its comments, which stated that under the proposed rule, "danger and disorder would rule our cities." Comments of Dallas, *et al.*, filed July 15, 1995, at 4.

³⁴ Order at ¶ 26.

³⁵ Comments of HNS at 13.

³⁶ NLC at 12-13.

³⁷ Order at ¶ 20.

VSATs even moved from their installed locations, and neither antenna left the roof or injured any person.³⁸

Moreover, it does not stand to reason that an enterprise that wants to do business in a community will ignore the reasonable regulations of that community. HNS has advised its installers that they should continue to abide by any and all reasonable local satellite antenna regulations, in addition to observing the stringent standards already demanded by HNS.³⁹ In accordance with its comments in this proceeding, HNS has advised its installers to comply with a local regulation as long as it does not involve:

1. imposition of more than \$50 in costs, including governmental fees, engineering or legal fees, and the cost of any construction or alteration necessitated by the regulation; or
2. being required to wait more than seven days for a permit or other authorization before installation is allowed; or
3. being required to attend a hearing or meeting of any kind.

While HNS believes that some regulations that meet these criteria may not comply with the FCC's standard for reasonableness (for example, a community could not charge a \$50 tax on VSAT installations simply to raise revenue, nor could it charge a \$50 "inspection fee" for satellite antennas only), HNS is willing to abide by any regulation within

³⁸ Reply Comments of HNS at 12-13.

³⁹ As HNS told the Commission in its Reply Comments, HNS carefully selects, certifies and monitors its local installers, who install antennas according to windloading and ballast specifications based upon data from the American National Standards Institute, the Electronic Industry Association and the National Weather Service. HNS Reply Comments, filed August 15, 1995, at 12-14. Exhibit B (declaration of Steven P. d'Adolf).

these bounds. HNS therefore would not object to the Commission establishing these standards as a "safe harbor" for local regulation.

Of course, local jurisdictions that still have concerns about the safety of satellite antennas can inspect these installations without imposing unreasonable costs on the users. The BOCA building code, submitted by NLC as an example of a regulation that has become "immediately invalidated," requires that satellite antennas greater than two feet in diameter be subject to "approval of the code official."⁴⁰ NLC does not explain why a code official could not grant his approval for a satellite antenna installation without imposing unreasonable costs on the satellite user. Nor does NLC submit any evidence to show that standard satellite antenna installations do not meet BOCA's structural and windloading provisions. At bottom, Petitioners completely fail, as they did earlier in this proceeding, to demonstrate that the revised rule presents any health or safety concerns.

C. The Revised Rule Protects the Federal Interest

Petitioners also argue, as they have throughout this proceeding, that the Commission's revised preemption rule ignores "local interests"⁴¹ and improperly imposes a burden on local authorities to conform their regulations to the federal standard.⁴² This argument is misdirected as a matter of law and fact.

⁴⁰ NLC at 14, Exhibit A.

⁴¹ Dallas at 7-10.

⁴² NLC at 14.

As a matter of law, the federal government, including a federal agency, has the power to preempt state law.⁴³ When preempting nonfederal regulations, an agency must serve the federal interest it is charged to protect, not the local interests served by the regulations it seeks to preempt.⁴⁴ As the Commission stated in the Order, "the relative importance to states or local jurisdictions of their own laws is not the proper focus in a decision to preempt."⁴⁵

Despite its authority to preempt nonfederal law, and the overwhelming record before it that local regulators have been incapable of considering the federal interest when adopting their own regulations, the Commission did not preempt all local regulation of satellite antennas. Instead, the Commission tailored its rule to recognize the local interests asserted by Petitioners. For example, the rule explicitly recognizes that local regulators traditionally place greater emphasis on aesthetic regulation in residential areas, and limits the presumptive preemption to regulations affecting dishes one meter or smaller. In commercial areas, where aesthetic regulation is typically less strict, the presumptive preemption applies to satellite antennas two meters or smaller. Finally, reasonable aesthetic regulation is permitted for all antennas larger than two meters.

NLC also attacks the Commission for creating "an incredible shift of administrative burden on thousands of local governments nationwide" by requiring that local regulations state a "clearly-defined health, safety or aesthetic objective."⁴⁶ Here, NLC

⁴³ See, e.g., *City of New York v. FCC*, 486 U.S. 57 (1988). Dallas, in fact, recognizes this power. Dallas at 8.

⁴⁴ *Id.*

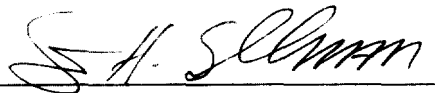
⁴⁵ *Order* at ¶ 13.

⁴⁶ NLC at 14.

inadvertently admits what HNS and so many other have been telling the Commission all along: local regulators have refused to follow the FCC's standards when enacting satellite antenna regulations. From its adoption in 1986, Section 25.104 has required local governments to place such objective under the 1986 Rule.⁴⁷ If "thousands of local governments" are now required to amend their laws, it is only because they have been ignoring federal law for far too long.

Respectfully submitted,

HUGHES NETWORK SYSTEMS, INC.

By: 

James F. Rogers
Steven H. Schulman*
LATHAM & WATKINS
1001 Pennsylvania Ave., NW
Suite 1300
Washington, DC 20004
(202) 637-2200

Dated: May 21, 1996

Its counsel

* Admitted in Maryland only

⁴⁷ Former Section 25.104(a) preempted local satellite antenna regulations that did not contain "a reasonable and clearly defined health, safety or aesthetic objective." *See also Cawley v. City of Port Jervis*, 753 F. Supp. 128, 131 (S.D.N.Y. 1990) (the objective must be in the text of the regulation itself; neither broad language regarding "use and enjoyment" of property nor a post-hoc explanation of the locality's goals will suffice as a "clearly defined objective").

CERTIFICATE OF SERVICE

I certify that I have, this 21st day of May, served by United States mail, postage prepaid, Hughes Network Systems, Inc.'s Opposition to Petitions for Reconsideration, to the following:

Tilman L. Lay
Miller, Canfield, Paddock & Stone, P.L.C.
1225 9th Street, N.W., Suite 400
Washington, D.C. 20036

Counsel for National League of Cities, et. al.

H. Lawrence Hoyt
Boulder County Attorney
P.O. Box 471
Boulder, CO 80306-0471

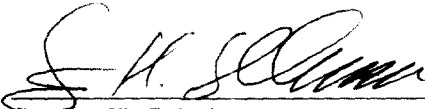
Counsel for Board of County Commissioners, Boulder County,
Colorado

Scott Carlson
Assistant City Attorney
City of Dallas
City Hall
Dallas, TX 75201

Counsel for the City of Dallas, et.al.

Michael Sittig
Executive Director
Florida League of Cities
201 West Park Avenue
P.O. Box 1757
Tallahassee, FL 32302-1757

For the Florida League of Cities


Steven H. Schulman